

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

INTRODUCTION

1. This class action seeks redress for collection practices that violate the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (the “FDCPA”) and Wisconsin Consumer Act, Ch. 421-427, Wis. Stats. (the “WCA”).

JURISDICTION AND VENUE

2. The court has jurisdiction to grant the relief sought by the Plaintiff pursuant to 15 U.S.C. § 1692k and 28 U.S.C. §§ 1331, 1337, and 1367. Venue in this District is proper in that Defendant directed its collection efforts into the District.

PARTIES

3. Plaintiff Cindy Zurakov is an individual who resides in the Eastern District of Wisconsin (Washington County).

4. Plaintiff is a “consumer” as defined in the FDCPA, 15 U.S.C. § 1692a(3), in that Defendant sought to collect from Plaintiff a debt allegedly incurred for personal, family or household purposes.

5. Plaintiff is also a “customer” as defined in the WCA, Wis. Stat. § 421.301(17), in that the debt Defendant sought to collect from Plaintiff was incurred as a result of a consumer transaction.

6. Defendant Professional Placement Services, LLC, (“PPS”) is a debt collection agency with its principal offices located at 272 N 12TH St., Milwaukee, WI 53233-2604.

7. PPS is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts originally owed to others.

8. PPS is engaged in the business of collecting debts owed to others and incurred for personal, family or household purposes.

9. PPS is a debt collector as defined in 15 U.S.C. § 1692a and Wis. Stat. § 427.103(3).

FACTS

10. On or about November 26, 2018, Capital One, N.A. (“Capital One”) mailed an account statement to Plaintiff regarding an alleged debt owed Capital One, associated with a Kohl’s branded credit card account with an account number ending in 8637. A copy of this account statement is attached to this complaint as Exhibit A.

11. Exhibit A includes the following representations:

New Balance	\$	604.44
Payment Due Date		12/22/2018
Minimum Payment Due		387.00
Amount Past Due		332.00
To Avoid Interest Charge Pay	\$	604.44

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee up to \$37.00

12. Exhibit A thus states that, as of November 26, 2018, Plaintiff's account ending in 8637 had a "New Balance" of \$604.44, with a "Payment Due Date" of December 22, 2018, and a "Minimum Payment Due" of \$387.00.

13. On or about December 5, 2018 PPS mailed Plaintiff a debt collection letter regarding the same alleged debt owed to Capital One, associated with a credit card account with an account number ending in 8637. A copy of this letter is attached to this complaint as Exhibit B.

14. Upon information and belief, Exhibit B is a form letter, generated by computer, and with the information specific to Plaintiff inserted by computer.

15. Upon information and belief, Exhibit B is a form debt collection letter, generated by computer, and used by PPS to attempt to collect alleged debts.

16. Exhibit B was the first letter that PPS sent to Plaintiff with respect to Plaintiff's alleged Capital One debt.

17. Exhibit B contains the validation notice that the FDCPA, 15 U.S.C. § 1692g, requires that debt collectors send debtors along with their initial communications:

This is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose. Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

18. Exhibit B also includes the following representation:

Creditor:	Capital One, N.A.
Original Creditor:	Capital One, N.A.
Re:	Your Kohl's Credit Card Account XXXXXX8637
PPS Account #:	████████1692
Balance:	\$604.44

19. Exhibit B additionally includes the following representation:

COLLECTION NOTICE

Associate Member

This letter will serve to inform you that your delinquent account has been placed with Professional Placement Services, LLC (PPS). PPS will help you resolve this debt!!

20. Exhibit B, thus, represents that the debt had been accelerated and the full balance was due when Exhibit B was mailed.

21. Exhibit B is therefore false, deceptive, and misleading. *See* FTC Staff Commentary, 53 Fed. Reg. 50097, 50106 (“A debt collector may not ... falsely assert that the debt has matured or that it is immediately due and payable, when it is not.”).

22. Exhibit A, mailed on November 26, 2018, just a few days before PPS mailed Exhibit B to Plaintiff, states the “Minimum Payment Due,” thus permitting Plaintiff to return her account to a current status by making a minimum payment by December 22, 2018.

23. Exhibit B fails to include any reference to an amount owing to Capital One other than the total account balance.

24. The unsophisticated consumer cannot determine whether the debt had been accelerated or not, or how much debt is actually due as of the date of Exhibit B. Exhibit B states the “Balance” without stating an amount “due” while Exhibit A seeks only a minimum payment. *See Machnik v. RSI Enters.*, 2017 U.S. Dist. LEXIS 160772, at *6 (E.D. Wis. Sept. 29, 2017) (“In the context of a debt, ‘owing’ an amount is distinguishable from the amount ‘due.’”).

25. PPS represented the amount of the debt in a way that was confusing to the unsophisticated consumer and/or misrepresented the amount, character, or legal status of the debt.

26. Upon information and belief, PPS has a pattern and practice in collecting Capital One debts such as Plaintiff’s where PPS states the amount of the debt in a confusing manner and/or misrepresents the amount, character, or legal status of consumers’ debts.

27. Upon information and belief, PPS is fully aware of the contents and representations in Exhibit A.

28. Upon information and belief, PPS is fully aware that Capital One sends Exhibit A to consumers with just a few days of the date PPS mails a letter in the form of Exhibit B.

29. Upon information and belief, PPS is fully aware that its letter is sent during account billing cycles wherein Capital One has sent a statement to consumers seeking a “minimum payment” and not representing that the entire balance is due.

30. Plaintiff read Exhibits A-B.

31. Plaintiff was misled and confused by Exhibits A-B.

32. The unsophisticated consumer would be confused by Exhibits A-B.

The FDCPA

33. The FDCPA creates substantive rights for consumers; violations cause injury to consumers, and such injuries are concrete and particularized. *Derosia v. Credit Corp Solutions*, 2018 U.S. Dist. LEXIS 50016, at *12 (E.D. Wis. Mar. 27, 2018) (“‘a plaintiff who receives misinformation from a debt collector has suffered the type of injury the FDCPA was intended to protect against’ and ‘satisfies the concrete injury in fact requirement of Article III.’”) (quoting *Pogorzelski v. Patenaude & Felix APC*, No. 16-C-1330, 2017 U.S. Dist. LEXIS 89678 *9 (E.D. Wis. June 12, 2017); *Spuhler v. State Collection Servs.*, No. 16-CV-1149, 2017 U.S. Dist. LEXIS 177631 (E.D. Wis. Oct. 26, 2017) (“As in *Pogorzelski*, the Spuhlers’ allegations that the debt collection letters sent by State Collection contained false representations of the character, amount, or legal status of a debt in violation of their rights under the FDCPA sufficiently pleads a concrete injury-in-fact for purposes of standing.”); *Bock v. Pressler & Pressler, LLP*, No. 11-7593, 2017 U.S. Dist. LEXIS 81058 *21 (D.N.J. May 25, 2017) (“through [s]ection 1692e of the

FDCPA, Congress established ‘an enforceable right to truthful information concerning’ debt collection practices, a decision that ‘was undoubtedly influenced by congressional awareness that the intentional provision of misinformation’ related to such practices, ‘contribute[s] to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy,’); *Quinn v. Specialized Loan Servicing, LLC*, No. 16 C 2021, 2016 U.S. Dist. LEXIS 107299 *8-13 (N.D. Ill. Aug. 11, 2016) (rejecting challenge to Plaintiff’s standing based upon alleged FDCPA statutory violation); *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 U.S. Dist. LEXIS 89258 *9-10 (N.D. Ill. July 11, 2016) (“When a federal statute is violated, and especially when Congress has created a cause of action for its violation, by definition Congress has created a legally protected interest that it deems important enough for a lawsuit.”); *Church v. Accretive Health, Inc.*, No. 15-15708, 2016 U.S. App. LEXIS 12414 *7-11 (11th Cir. July 6, 2016) (same); *see also Mogg v. Jacobs*, No. 15-CV-1142-JPG-DGW, 2016 U.S. Dist. LEXIS 33229, 2016 WL 1029396, at *5 (S.D. Ill. Mar. 15, 2016) (“Congress does have the power to enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute,” (quoting *Sterk v. Redbox Automated Retail, LLC*, 770 F.3d 618, 623 (7th Cir. 2014))). For this reason, and to encourage consumers to bring FDCPA actions, Congress authorized an award of statutory damages for violations. 15 U.S.C. § 1692k(a).

34. Moreover, Congress has explicitly described the FDCPA as regulating “abusive practices” in debt collection. 15 U.S.C. §§ 1692(a) – 1692(e). Any person who receives a debt collection letter containing a violation of the FDCPA is a victim of abusive practices. *See* 15 U.S.C. §§ 1692(e) (“It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive

debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses”).

35. Plaintiffs who allege that debt collectors engaged in misrepresentations in their dunning letters have standing, as such misrepresentations risk injury to interests expressly protected by Congress in the FDCPA. *See Oloko v. Receivable Recovery Servs.*, 2019 U.S. Dist. LEXIS 140164 (N.D. Ill. Aug. 19, 2019); *Untershine v. Encore Receivable Mgmt.*, No. 18-CV-1484, 2019 U.S. Dist. LEXIS 134377 *8-9 (E.D. Wis. Aug. 9, 2019) (“Protecting consumers from misinformation is one of the ‘concrete interest[s] that Congress sought to protect,’ under the FDCPA. If a consumer is misinformed, rather than merely uninformed, the risk of harm is greater.”) (internal citations omitted); *Richardson v. Diversified Consultants*, No. 17-cv-4047, 2019 U.S. Dist. LEXIS 118786 *10-11 (N.D. Ill. July 17, 2019) (“the receipt of a communication misrepresenting the character of the debt (here, the amount owed) is the kind of injury that Congress sought to prevent through the FDCPA. ‘Such an injury falls squarely within the ambit of what Congress gave consumers in the FDCPA: ‘a legally protected interest in certain information about debts,’ with ‘deprivation of information about one’s debt (in a communication directed to the plaintiff consumer) a cognizable injury.’” (internal citations omitted); *see also Pierre v. Midland Credit Mgmt., Inc.*, 2017 WL 1427070, at *4 (N.D. Ill. Apr. 21, 2017); *Saenz v. Buckeye Check Cashing of Illinois*, 2016 WL 5080747, at *1-2 (N.D. Ill. Sept. 20, 2016); *Bernal v. NRA Grp., LLC*, 318 F.R.D. 64, 72 (N.D. Ill. 2016) (holding that Plaintiff had standing to challenge misleading communication sent to him because the communication violated his “right to be free from such misleading communications”). Such misrepresentations may cause consumers to make incorrect decisions about their finances or make payments to incorrect parties.

36. 15 U.S.C. § 1692e prohibits “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

37. 15 U.S.C. § 1692e(2)(A) specifically prohibits: “The false representation of — the character, amount, or legal status of any debt.”

38. 15 U.S.C. § 1692e(10) specifically prohibits the “use of any false representation or deceptive means to collect or attempt to collect any debt.”

39. 15 U.S.C. § 1692f generally prohibits a debt collector from using “unfair or unconscionable means to collect or attempt to collect any debt.”

40. 15 U.S.C. § 1692f(1) specifically prohibits the “collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.”

41. 15 U.S.C. § 1692g(a) states:

a) **Notice of debt; contents**

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

The WCA

42. The Wisconsin Consumer Act (“WCA”) was enacted to protect consumers against unfair, deceptive, and unconscionable business practices and to encourage development of fair and economically sound practices in consumer transactions. Wis. Stat. § 421.102(2).

43. The Wisconsin Supreme Court has favorably cited authority finding that the WCA “goes further to protect consumer interests than any other such legislation in the country,” and is “probably the most sweeping consumer credit legislation yet enacted in any state.” *Kett v.*

Community Credit Plan, Inc., 228 Wis. 2d 1, 18 n.15, 596 N.W.2d 786 (1999) (citations omitted).

44. To further these goals, the Act's protections must be "liberally construed and applied." Wis. Stat. § 421.102(1); *see also* § 425.301.

45. "The basic purpose of the remedies set forth in Chapter 425, Stats., is to induce compliance with the WCA and thereby promote its underlying objectives." *First Wisconsin Nat'l Bank v. Nicolaou*, 113 Wis. 2d 524, 533, 335 N.W.2d 390 (1983). Thus, private actions under the WCA are designed to both benefit consumers whose rights have been violated and also competitors of the violators, whose competitive advantage should not be diminished because of their compliance with the law.

46. To carry out this intent, the WCA provides Wisconsin consumers with an array of protections and legal remedies. The Act contains significant and sweeping restrictions on the activities of those attempting to collect debts. *See* Wis. Stats. § 427.104.

47. The Act limits the amounts and types of additional fees that may be charged to consumers in conjunction with transactions. Wis. Stats. § 422.202(1). The Act also provides injured consumers with causes of action for class-wide statutory and actual damages and injunctive remedies against defendants on behalf of all customers who suffer similar injuries. *See* Wis. Stats. §§ 426.110(1); § 426.110(4)(e). Finally, "a customer may not waive or agree to forego rights or benefits under [the Act]." Wis. Stat. § 421.106(1).

48. Consumers' WCA claims under Wis. Stat. § 427.104(1) are analyzed using the same methods as claims under the FDCPA. Indeed, the WCA itself requires that the court analyze the WCA "in accordance with the policies underlying a federal consumer credit protection act," including the FDCPA. Wis. Stat. § 421.102(1).

49. Further, the Wisconsin Supreme Court has held that WCA claims relating to debt collection are to be analyzed under the “unsophisticated consumer” standard. *Brunton v. Nuvell Credit Corp.*, 785 N.W.2d 302, 314-15. In *Brunton*, the Wisconsin Supreme Court explicitly adopted and followed the “unsophisticated consumer” standard, citing and discussing *Gammon v. GC Servs. Ltd. P’ship*, 27 F.3d 1254, 1257 (7th Cir. 1994). *Id.*

50. Wis. Stat. § 427.104(1)(j) states that a debt collector may not: “Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist.”

51. Wis. Stat. § 427.104(1)(L) states that a debt collector may not: “Threaten action against the customer unless like action is taken in regular course or is intended with respect to the particular debt.”

COUNT I – FDCPA

52. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

53. By listing the total balance of Plaintiff’s alleged debt without disclosing that Plaintiff could return the account to current status by paying a “Minimum Amount Due,” Exhibit B includes representations which are false, deceptive, and misleading as to the character, amount, and legal status of such debt.

54. Defendant violated 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(10), 1692(f), 1692f(1), and 1692g(a)(1).

COUNT II -- WCA

55. Plaintiff incorporates by reference as if fully set forth herein the allegations contained in the preceding paragraphs of this Complaint.

56. By listing the total balance of Plaintiff's alleged debt without disclosing that Plaintiff could return the account to current status by paying a "Minimum Amount Due," Exhibit B claims a right with reason to know such right does not exist.

57. Defendant violated Wis. Stat. §§ 427.104(1)(j), and 427.104(1)(L).

CLASS ALLEGATIONS

58. Plaintiff brings this action on behalf of a class, consisting of: (a) all natural persons in the State of Wisconsin (b) who were sent a collection letter in the form of Exhibit B to the Complaint in this action, (c) for an alleged debt owed to Capital One and incurred for personal, family, or household purposes, (d) which was not accelerated when Exhibit B was mailed, (e) where the letter was mailed between November 13, 2018 and November 13, 2019, and (f) not returned by the postal service.

59. The class is so numerous that joinder is impracticable. Upon information and belief, there are more than 50 members of each class.

60. There are questions of law and fact common to the class members, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether Exhibit B violates the FDCPA and/or the WCA.

61. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

62. Plaintiff will fairly and adequately represent the interests of the class members. Plaintiff has retained counsel experienced in consumer credit and debt collection abuse cases.

63. A class action is superior to other alternative methods of adjudicating this dispute. Individual cases are not economically feasible.

JURY DEMAND

64. Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the Class and against Defendants for:

- (a) actual damages;
- (b) statutory damages;
- (c) attorneys' fees, litigation expenses and costs of suit; and
- (d) such other or further relief as the Court deems proper.

Dated: November 13, 2019

ADEMI & O'REILLY, LLP

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